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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,837	11/10/2000	Robert D. Studdiford	66033-12 (6190-54302)	9281

7590 05/20/2002

COUDERT BROTHERS
600 BEACH STREET
SAN FRANCISCO, CA 94109

EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT PAPER NUMBER

3632

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/712,837

Applicant(s)

STUDDIFORD ET AL.

Examiner

Gwendolyn Baxter

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 and 30 is/are allowed.
- 6) ☒ Claim(s) 21 and 26-29 is/are rejected.
- 7) ☒ Claim(s) 22-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3632

This is the second office action for serial number 09/712,837, Bicycle Accessory Mounting Apparatus, filed on November 10, 2000.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,909,051 to Lee, hereinafter Lee. The present invention reads on Lee as follows: Lee discloses a mounting apparatus comprising a mounting base (10) having a first end and a second end, a mounting base slot (32) having a mounting base left slot opening (near 24) and a mounting base right slot opening (not numbered). The first and second ends of the mounting base having a first and second curved surfaces (20,22), respectively. A cinching member (12,14) is adapted to slide through the slot and secure first and second objects at the mounting base first and second curved portions. The mounting base is disclosed to be elastic which is inherently flexible material.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3632

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of U.S. Patent No. 5,278,220 to Vermeire. Lee discloses the limitations of the base claim, including the mounting base being formed of an elastomeric material. However, fails to disclose the specified shore hardness. Vermeire teaches an elastomeric having a shore hardness between 40-85. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the elastomeric material of the mounting base as taught by Lee to have incorporated polymer composition taught by Vermeire for the purpose of providing a strong apparatus having a retention during aging of tensile strength, color stability and low volatility upon exposure to heat and/or light.

Allowable Subject Matter

Claims 1-20 and 30 are allowed, since applicant has filed a terminal disclaimer to overcome the double patenting rejection.

Claims 22-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3632

The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose the actual arrangement of the first and second hook and loop portions along the strap for securing the object.

Response to Arguments

Applicant's arguments filed March 5, 2002 have been fully considered but they are not persuasive. .

In response to applicant's argument that Lee fails to teach the mounting base left and right slots. Applicant's attention is directed to figure 1 (no figure 5 is provided as indicated by applicant in his arguments). Figure 1 shows slots which extend through the mounting base - a left slot located on the left side and a right slot located on the right side of the mounting base. Applicant should note that the mounting base is configured to receive a cinching member so that the member extends through and out of the mounting base from the right and left sides of the mounting base as claimed.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure,

Art Unit: 3632

such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is (703) 308-0702. The examiner can normally be reached Monday-Friday from 8:30 A.M. to 5:00 P.M. Eastern Time Zone.


Any inquiry of a general nature or relating to the status of this application should be

Application/Control Number: 09/712,837


Page 6

Art Unit: 3632

directed to the Group receptionist whose telephone number is (703) 308-1113. The fax phone number for this Group is (703) 305-3597.



Gwendolyn Baxter
May 16, 2002



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER